

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Frank Edmonds, Jr.,)	
)	CASE NO. 3:03CV7482
Plaintiff(s),)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	(Resolving Doc. No. 146)
Neil Turner, et al.,)	
)	
Defendant(s).)	
)	

Before the Court is the Motion of Defendant North Central Correctional Institution (“NCCI”) to Dismiss pursuant to Fed. R. Civ. Pro. 12(c) (Docket No. 146). The Court previously addressed an earlier motion to dismiss (Docket No. 59), granting the motion in part and denying the motion in part. See April 28, 2006 Memorandum Opinion, Docket No. 91 at 4.

Defendant NCCI has reasserted two arguments that it previously made but the Court did not address: (1) pursuant to the Eleventh Amendment, NCCI must be dismissed as a defendant, and (2) pursuant to Will v. Michigan Dept. of Police, 491 U.S. 58 (1989), NCCI is not a person subject to liability under Section 1983 and must therefore be dismissed.

The Court granted Plaintiff leave to respond to the renewed motion to dismiss and Plaintiff has timely filed his response. See Docket No. 153. However, based on the Will decision, the Court agrees with Defendant that as a state agency, NCCI is not a “person” for purposes of Section 1983 litigation. (“We find nothing substantive in the legislative history that leads us to believe that Congress intended that the word “person” in Section 1983 included the States of the Union.” 491 U.S. at 69). Cf. Monell v. New York City Dept. of Social Services, 436

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U.S. 658 (1978) (local and municipal governmental bodies are persons for purposes of Section 1983).¹

Accordingly, the motion is granted (Docket No. 146) and Defendant NCCI is dismissed. However, this action will proceed against the other named Defendants as to Counts One and Three of the Second Amended Complaint.

IT IS SO ORDERED.

December 5, 2006
Date

/s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge

¹Because of the Court's ruling that NCCI is not a person for purposes of Section 1983, the Court will not address the additional argument that suit against NCCI is barred by the Eleventh Amendment.